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No. 83-1074

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

A. L. LOCKHART, DIRECTOR
ARKANSAS DEPARTMENT OF CORRECTION
Petitioner,

v.

JAMES DEAN WALKER
Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

1. Were the findings of fact made by the District Court clearly erroneous, as that term is understood in Fed. R. Civ. P. 52(a)?

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OPINION BELOW

The Opinion of the United States Court of Appeals for the Eighth Circuit appears as Walker v. Lockhart, 713 F.2d 1378 (8th Cir. 1983).

JURISDICTIONAL STATEMENT

The Opinion of the United States Court of Appeals for the Eighth Circuit was delivered on August 11, 1983. The Petition for Rehearing En Banc was denied on September 29, 1983. An Amended Order denying rehearing was issued on October 4, 1983.

The Petitioner asserts that jurisdiction is conferred by Title 28, United States Code, Section 1254(1).

LEGAL PROVISION INVOLVED

Rule 52(a) Federal Rules of Civil Procedure

(a) Effect. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, the due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. The findings of a matter, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rule 12 or 56 or any other motion except as provided in Rule 41(b).

STATEMENT OF THE CASE

James Dean Walker was convicted of murder growing out of the 1963 death of a North Little Rock police officer. He served some twelve years in the Arkansas Department of Correction, but in 1975 was granted a furlough from the Cummins Unit of the Arkansas Prison System and failed to return from same. Four years later, he was apprehended in California, and he fought extradition to Arkansas. Walker attempted to block extradition in both the Federal and California Courts on the basis that his life would be in grave danger if he returned to Arkansas. These legal efforts were denied by this Supreme Court in

Pacileo v. *Walker*, 446 U.S. 1307 (1980) and *Pacileo* v. *Walker*, 449 U.S. 86 (1980) (per curiam).

Upon Walker's return to Arkansas, be brought suit against A. L. Lockhart, the Superintendent of the Arkansas Department of Corrections under 42 U.S.C. Section 1983 contending that his confinement within the Arkansas Penal System violated the Eighth Amendment prohibition against cruel and unusual punishment. He alleged that as a result of threats made against his life by Lockhart that his life would be in danger if he returned to the general prison population in Arkansas. He asked that he be allowed to serve the remainder of his sentence outside the Arkansas Prison System, in either a federal penitentiary or a prison in another state.

The District Court dismissed Walker's Section 1983 claim. The District Court made no findings of fact relating to Lockhart's alleged threats against Walker, but stated that "white light of publicity" about Walker's case would ensure Walker's safety. The District Court specifically left the matter of Walker's safety to the discretion of the Arkansas prison officials.

Walker then appealed the decision to the United States Court of Appeals for the Eighth Circuit which reversed the District Court denial of Walker's Section 1983 claim. A careful reading of the Court of Appeals opinion indicates that the Court relied on the undisputed evidence from both parties that Walker's continued confinement in the Arkansas Prison System would subject him to an unusually high risk of physical danger. Based on this undisputed evidence, the Court of Appeals found that Walker's Section 1983 Petition should be granted.

ARGUMENT

I.

The Court Of Appeals Properly Applied Legal Principles Regarding Cruel And Unusual Punishment To An Undisputed Factual Situation.

James Dean Walker contended on appeal to the Eighth Circuit Court of Appeals that the District Court had erred in failing to order protective measures to assure Appellant's safety. The thrust of the Department of Correction's Certiorari Petition is to argue that the opinion of the Eighth Circuit somehow violated Federal Rule of Civil Procedure 52(a) providing that "findings of fact will not be set aside unless clearly erroneous." However, as the Court of Appeals opinion points out, the undisputed evidence demonstrated that Walker's continued confinement in the Arkansas Prison System would subject him to an unusually high risk of physical danger. This is clearly the case and is in no way at variance with the findings of the District Court who recognized such danger as well. Furthermore, the application of the legal principles to the effect that Walker's continued confinement under such circumstances would amount to cruel and unusual punishment is not challenged by the State in its Petition for Certiorari.

James Dean Walker testified that he had been threatened by A. L. Lockhart, then Warden at the Tucker Unit of the Arkansas Prison System. He recounted this incident in specific terms as to how Lockhart had threatened his life at T.45-50. These threats were corroborated by the testimony of other inmates in the Arkansas Prison System as to hearing threats made by Lockhart against Walker. Finally, Cecil Boren, presently employed at a Federal Correction Institution and formerly the Assistant Superintendent at Cummins testified

under subpoena that he had specifically heard Lockhart threaten inmates, including James Dean Walker. (R.87)

At the first hearing, Lockhart did not see fit to take the stand and deny making the aforesaid threats. At a subsequent hearing, he did deny the existence of such threats. However, of strong importance is the fact that the District Court at no time in any proceeding made any finding either way regarding the existence of these threats. At no time whatsoever did the District Judge say that he found Walker's evidence on the threats not to be credible or that he credited Lockhart's testimony that such threats were not made. Rather, the District Court pointedly refused to make any findings at all regarding the existence of such threats.

However, even the State's evidence indicated that Walker was in danger in the Arkansas Prison System. For example, Dr. Robert Powitzky, Assistant Director in charge of health and correctional programs in the Arkansas penal system, testified at T.130 as follows:

Q. Do you not think that being in an institution under Mr. Lockhart's control, that there are other inmates who have access to Mr. Walker, that this also creates some danger?

A. Yes, sir.

Q. Now, why is that?

A. What I said, for whatever misguided reason, whether they wrongly understood that they might benefit from that, or whether they were going to have some sort of vendetta against Mr. Lockhart.

Q. When you say "vendetta," if they could harm James Dean Walker and get Mr. Lockhart in trouble, so inmates might be happy with that?

A. Yes, sir.

Further, Ronald Dobbs, Assistant Warden in charge of the facility housing Walker admitted at R.117 that he did not know that Walker could be protected. In his words:

> Q. What you're telling me is that if James Dean Walker is put back where other prisoners have access to him, you don't know how he can be protected at this time, do you?
>
> A. At this time, no.

Finally, it is submitted that the comment of the Court at the conclusion of the first hearing at T.140 is of great importance. The Court commented as follows:

> I am not satisfied on the basis of the testimony that I have heard that the man's safety can be assured except in that diagnostic facility down there.

However, at the conclusion of all the proof, the District Court did not order any sort of protective measures to assure the safety of James Dean Walker. He merely announced that he would rely on the "white light of publicity" to keep Walker safe. The District Court ordered no measures whatsoever to prevent Walker from being placed in the general prison population or to be given any sort of protection whatsoever.

As a matter of law, it is contended by James Dean Walker that having to endure fear in an incarcerated condition as a result of the threats on his life by his jailor is a form of cruel and unusual punishment violative of the Eighth Amendment. See *Hudspeth* v. *Figgins*, 584 F.2d 135 (4th Cir. 1978). The record clearly demonstrated that even the state officials recognized that Walker was in danger from other prisoners, who might be trying to curry favor with Lockhart by causing harm to James Dean Walker, or might be trying to cause Lockhart embarrassment by causing harm to James Dean Walker.

Under either event, James Dean Walker would be hurt or killed. Furthermore, the evidence was undisputed that the aforesaid danger was ready and apparent from the standpoint of the other inmates and James Dean Walker was living in solitary confinement because of such perceived dangers.

Under these circumstances, the District Court made no findings about whether the threats were made. Furthermore, the District Court made no explanation as to why the District Court would ignore the undisputed evidence that Walker's life was in danger in the Arkansas Prison System. Certainly, the application of law by the Court of Appeals is correct.

The Court of Appeals indicated that the administration of prisons was generally not within the province of the Court. However, the Court of Appeals stated that the undisputed evidence demonstrated that Walker's continued confinement in the Arkansas Prison System would subject him to an unusually high risk of physical danger. The evidence indicated that Arkansas in the past had transferred inmates to the federal system or to prison systems in another state. The Court of Appeals then held that it did not agree with the District Court that the "white light of publicity" would insure Walker's safety. The Court squarely held that there was no evidence in the record to show that Walker's notoriety would keep him safe and that there was ample evidence to the contrary.

Under the aforesaid circumstances, the actions and findings by the Eighth Circuit Court of Appeals do not violate any provision in Rule 52(a) of the Federal Rules of Civil Procedure. This case has involved the Court of Appeals properly applying law to an undisputed factual situation. There is no basis for the granting of certiorari in this matter pointed out in Petitioner's Brief.

CONCLUSION

Respondent respectfully submits that the United States Court of Appeals for the Eighth Circuit has properly applied law to an undisputed factual situation and that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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